

REMARKS

The present Amendment is in response to the Official Action mailed October 10, 2006. Claims 1 and 8 have been amended. Claims 24 and 25 are new. Therefore claims 1-25 remain currently pending in the present application. The following sets forth Applicants' remarks regarding the currently pending claims.

As an initial matter, Applicants respectfully thank the Examiner for noting claims 18-23 as allowable. Given that claim 18 is an independent claim, from which claims 19-23 properly depend, no further discussion relating to such claims is set forth herein, and Applicants respectfully request that such issue as is. In addition, Applicants respectfully thank the Examiner for noting the subject matter of claims 3-5 and 10-12 as objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. New claims 24 and 25 have been added, which incorporate the subject matter of dependent claims 3 and 10 into claims 1 and 8, respectively. However, as is set forth more fully below, although Applicants appreciate the notation of this allowable subject matter, they feel as though certain less limiting limitations may be added to independent claims 1 and 8 in order to move same into a condition of allowance.

In the first paragraph of the Official Action, the Examiner requests a copy of the Affidavit that had been previously submitted in the parent case (Serial No. 10/124,170), and in particular the date to which the Affidavit is sworn behind. Enclosed for the Examiner's review is a copy of such Affidavit, in which the inventors clearly set forth evidence of reduction to practice prior to July 3, 2001. Applicants note that this date does not necessarily represent the earliest date to which the present invention can be sworn to, and note that

such was merely provided to overcome a reference having a priority of July 3, 2001.

Turning now to the substance of the Official Action, the Examiner has rejected claims 1, 2, 6-9 and 13-17 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,871,504 to Eaton et al. ("Eaton"). The Examiner asserts that Eaton discloses a system for use in spinal stabilization including an anchor member 26 comprising a bone engaging portion 26f and a head 26c, where the head comprises a recess 26c and an external surface. In addition, the Examiner opines that Eaton discloses a rod 34 and a rod persuader 30 comprising a body 30 having a first end 46 and a second end 36 (where the second end is releasably attached to the anchoring member), a pusher member 45 at the second end capable of urging the rod into the recess of the anchoring member, a pistol grip 46 attached to the body, and a trigger 48 coupling the pusher member to the body and capable of urging the pusher member toward the anchoring member.

At this time, it is worth noting that Applicants' counsel discussed Eaton with the Examiner on September 26, 2006. In that discussion, it was brought to the attention of the Examiner that Applicants believed (and still believe) that Eaton is far different from the present invention. Eaton teaches a device where actuation of the trigger pulls rather pushes a member. In the Official Action, the Examiner apparently agrees with these assertions, but notes that as independent claims 1 and 8 were originally presented, such may be read upon the device taught in Eaton. Specifically, the Examiner notes the limitation "a trigger coupling the pusher member to the body and capable of urging the pusher member toward the anchoring member" of both independent claims as functional language that can be met by a person holding the device taught in Eaton and moving the entire device toward the anchoring member before the anchoring member and the rod are connected to each other via

threading 34a and recess 26c. In other words, the Examiner is of the opinion that independent claims 1 and 8, as they were originally presented, would cover a situation where a user was holding the rod persuader of Eaton and simply moved the entire rod persuader apparatus forward in order to urge the pusher member toward the anchoring member, without ever actuating the trigger. In response to these rejections, Applicants have amended independent claims 1 and 8 to include the limitation of "a trigger coupling said pusher member to said body, wherein actuation of said trigger translates said pusher member towards said anchoring member." This is far different from that which is taught in Eaton.

Actuation of the trigger in Eaton clearly causes the aforementioned pulling effect, rather than the pushing effect of the present invention. This makes sense, as Eaton is directed to an anchor assembly and method for securing ligaments to the bone where a device is required for pulling a ligament graft through one or more bores formed in one or more bones. That process in and of itself is far different from that which the invention of the present application is directed, and as such, the present invention operates in a substantially different manner. The present invention provides a device useful in pushing a rod into a screw head in, for example, a spinal procedure. Amended claims 1 and 8 clearly claim this invention. Thus, as amended, independent claims 1 and 8 are clearly not anticipated nor obviated by the Eaton reference.

In light of all of the above, Applicants respectfully submit that the above-discussed amendments and arguments overcome the prior art of record. Specifically, independent claims 1 and 8, as amended, are not anticipated or obviated by Eaton. Given that the remaining claims either depend upon independent claim 1 or independent claim 8, or are noted by the Examiner as being allowable (discussed above), such claims

should also overcome the prior art of record. Therefore, Applicants respectfully request allowance of claims 1-25 accordingly.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 3, 2007

Respectfully submitted,

By 

Kevin M. Koon

Registration No.: 54,230

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants